

THE COUNTY BULLETIN

And Uniform Compliance Guidelines

ISSUED BY STATE BOARD OF ACCOUNTS

Vol. No. 355

July 2006

REMINDER OF ORDER OF BUSINESS

July

- 1 On or before this date the county treasurer shall certify a list of real estate delinquencies for tax sale. [IC 6-1.1-24-1]

On or before July 1 of each year, each county assessor shall certify to the county auditor the assessment value of the personal property in every taxing district. [IC 6-1.1-3-17]
- 2 On or before this date, the county auditor should receive County Form 144 from officers, boards, commissioners and agencies "Statement of Salaries and Wages Proposed to be Paid Officers and Employees." [IC 36-2-5-4] The county auditor shall present these forms to the county executive at its July meeting. The county executive shall review and make its recommendations. Before August 20 the county executive shall present County Form 144 and its recommendations to the county fiscal body.
- 4 Legal Holiday - Independence Day [IC 1-1-9-1]
- 10 Distribute congressional interest to school corporations - second Monday. [IC 20-42-2-7]
- 15 In those counties participating in Public Employee's Retirement Fund, last day to make pension report and payment for the second quarter of 2006 to the Public Employee's Retirement Fund.
- 20 Last day to report and make payment of balance of State and County Income Tax withheld in the month of June to Indiana Department of Revenue.
- 31 Last day to file quarterly unemployment compensation reports with Indiana Employment Security Division.

Last day for county treasurer to mail demand notices to delinquent personal property taxpayers. [IC 6-1.1-23-1]

August

- 1 First day annual tax sale can be held. [IC 6-1.1-24-2(a)(10)]
- 9 Last date for county officers and department heads to file the respective budget estimates with county auditor - Wednesday following first Monday in August. [IC 36-2-5-9]
- 9-11 County Treasurer's Annual Conference – Merrillville
- 19 Last date for board of commissioners to review "Statements for Salaries and Wages Proposed to be Paid Officers and Employees" and to make its recommendations to the county council. [IC 36-2-5-4(b)]
- 20 Last day to report and make payment of State and County Income Tax withheld in the month of July to Indiana Department of Revenue.

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- 31 Last date for first publication of county budget (10 days prior to public hearing). [IC 6-1.1-17-3]

September

- 4 Legal Holiday - Labor Day. [IC 1-1-9-1]
- 7 Last date for second publication of county budget (7 days after the first publication). [IC 5-3-1-2]
- 10 Last date for budget public hearing (10 days prior to adoption). [IC 6-1.1-17-5(a)]
- 19-20 Last date to comply with provisions IC 36-2-5-11, "Each ordinance shall be read on at least two separate days before its final adoption."
- Last date for taxing officials to file copies of budgets and tax levy with the county auditor for presentation to County Tax Adjustment Board. [IC 6-1.1-17-5(d)]
- 20 Last date county council may meet to determine budgets and tax rates. [IC 6-1.1-17-5(a)(1)]
- Last day to report and make payment of State and County Income Tax withheld in the month of August to Indiana Department of Revenue.
- 22 First meeting of County Tax Adjustment Board, if applicable. [IC 6-1.1-29-4] (On September 22 or on first business day after, if September 22 is not a business day.)

OBSELETE VOLUMES

All articles from Volumes 309 and earlier of The County Bulletin have now been updated and are no longer applicable; thus Volumes 309 and earlier may be deleted from your file.

COURT COSTS - GOVERNMENTAL UNITS

IC 33-37-3-1 provides "The fees prescribed in civil actions or paternity actions may not be collected from the state or a political subdivision in an action brought by or on behalf of the state or any political subdivision. This section does not prevent the collection of fees from a defendant when the state or political subdivision is successful in its action."

The State Board of Accounts is of the audit position that the state and any of its political subdivisions (including school corporations) are not liable for costs as provided in IC 33-37-3-1 as stated above. Furthermore, Rule 54 of Trial Procedure provides in part (d) "Except when express provision therefore is made either in a statute or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs in accordance with any provision of law; but costs against any governmental organization, its officers, and agencies shall be imposed only to the extent permitted by law..."

We are not aware of any specific statutes imposing costs against any governmental organization. Finally, we believe the aforementioned audit position pertains to all actions filed in Circuit, Superior and County Court.

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INSPECTION OF MOTOR VEHICLES PRIOR TO REGISTRATION

The following is the State Board of Accounts audit position in this matter. IC 9-17-2-12 concerns certificates of registration of any motor vehicle or recreational vehicle. This statute states in part:

(b) This section does not apply to the following:

- (1) A new motor vehicle or recreational vehicle sold by a dealer licensed by the state.
- (2) A motor vehicle or recreational vehicle transferred or assigned on a certificate of title issued by the bureau.

(3) A motor vehicle that is registered under the International Registration Plan.

(c) an application for a certificate of title for a motor vehicle or recreational vehicle may not be accepted by the bureau unless the motor vehicle or recreational vehicle has been inspected by one (1) of the following:

- (1) An employee of a dealer designated by the bureau to perform an inspection.
- (2) A military policeman assigned to a military post in Indiana.
- (3) A police officer.
- (4) A designated employee of the bureau.

Such person inspecting such vehicle shall make a record of inspection upon the application form, prepared by the department and verify the facts set out in said application. A fee may be charged by a law enforcement agency for such inspection, subject to IC 9-29-4-2:

1. The fee must be established by ordinance adopted by the unit (as defined in IC 36-1-2-23).
2. The fee must not exceed five dollars (\$5).
3. The revenue from the inspection fee shall be deposited in a special vehicle inspection fund.
4. The fiscal body of the unit must appropriate the money collected from the inspection only for law enforcement purposes.

In the enabling ordinance, it is further suggested a procedure for handling the fees be established similar to those prescribed by the State Board of Accounts for accident report copy fees and handgun license applications and/or transfers, as follows:

- (1) Issue a receipt, Sheriff's Receipt No. 133, for each fee collected.
- (2) Remit receipts to the county auditor once each month, on the Monthly Report of Collections (County Form No. 362).
- (3) The county auditor shall receipt the collections into the Vehicle Inspection Fund.

CLERK - RECORDING BONDS

The State Board of Accounts has always advised clerks of the circuit court to be cognizant of the Indiana Bail Law which may be found in IC 27-10. Accordingly, IC 27-10-2-10(a) provides in part, "Recognizances for the appearance of prisoners shall in all cases and in all courts be in writing, be taken with at least one (1) resident freehold surety or be secured by a surety company, and be substantially in the following form: . . ." A recognizance form is then illustrated.

Also, please be advised, IC 27-10-2-11 provides in part "Such recognizance, together with a transcript of the proceedings and all papers in the case, shall be filed forthwith with the clerk of the proper court, who shall docket the cause and record such recognizance forthwith and enter it on the judgment docket . . ."

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COUNTY ECONOMIC DEVELOPMENT INCOME TAX (CEDIT)

County Economic Development Income Tax is governed by IC 6-3.5-7.

The entity that may impose the tax is the county income tax council if the county option income tax is in effect on January 1 of the year the County Economic Development Tax is imposed; the county council if the county adjusted gross income tax is in effect on January 1 of the year the County Economic Development Tax is imposed; or the county income tax council or the county council, whichever acts first, for a county not covered by the first two circumstances. (IC 6- 3.5-7-5(a))

On May 1 and November 1 of each year, one-half (1/2) of the certified distribution shall be distributed to the county treasurer by the Auditor of State. (IC 6-3.5-7-16)

The county auditor shall distribute the certified distribution to the respective county, cities, and towns. (IC 6-3.5-7-12)

The fiscal officer of each county, city, or town for a county in which the County Economic Development Tax is imposed shall establish an Economic Development Income Tax Fund. The revenue received by a county, city or town shall be deposited in the unit's Economic Development Income Tax Fund. (IC 6-3.5-7-13.1)

Revenues from the County Economic Development Income Tax may be used as follows:

- 1) By a county, city, or town for economic development projects, for paying under a written agreement all or part of the interest owed by a private developer or user on a loan extended by a financial institution or other lender to the developer or user if the proceeds of the loan are or are to be used to finance an economic development project, for the retirement of bonds for economic development projects, for leases, or for leases or bonds entered into or issued prior to the date the Economic Development Income Tax was imposed if the purpose of the lease or bonds would have qualified as a purpose at the time the lease was entered into or the bonds were issued.
- 2) By a county, city or town for:
 - A) The construction or acquisition of, or remedial action with respect to, a capital project for which the unit is empowered to issue general obligation bonds or establish a fund under any statute listed in IC 6-1.1- 18.5-9.8;
 - B) The retirement of bonds issued under any provision of Indiana law for a capital project;
 - C) The payment of lease rentals under any statute for a capital project;
 - D) Contract payments to a nonprofit corporation whose primary corporate purpose is to assist government in planning and implementing economic development projects;
 - E) Operating expenses of a governmental entity that plans or implements economic development projects;
 - F) To the extent not otherwise allowed under this chapter, funding substance removal or remedial action in a designated unit; or
 - G) Funding of a revolving fund established under IC 5-1- 14-14. (IC 6-3.5-7-13.1)

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COUNTY ECONOMIC DEVELOPMENT INCOME TAX (CEDIT) (Continued)

An economic development project is any project that the county, city, or town determines will promote significant opportunities for the gainful employment of its citizens, attract a major new business enterprise to the unit, or retain or expand a significant business enterprise within the unit and involves an expenditure for the acquisition of land, interests in land, site improvements, infrastructure improvements, buildings, structures, rehabilitation, renovation, and enlargement of buildings and structures, machinery, equipment, furnishings, facilities, administrative expenses associated with such a project, operating expenses authorized under subsection (b)(2)(E), to the extent not otherwise allowed, substance removal or remedial action, or any combination of these. (IC 6-3.5-7-13.1)

The executive of a county, city, or town may adopt a capital improvement plan specifying the uses of the revenues to be received or designate the county or city or town in the county as the recipient of all or a part of its share of the distribution.

If designation is made, the county treasurer shall transfer the share or part of the share to the designated unit unless the unit does not have a capital improvement plan. A county, city, or town that fails to adopt a capital improvement plan may not receive its fractional amount of the certified distribution or any amount designated for the year or years in which the unit does not have a plan. The county treasurer shall retain the certified distribution and any designated distribution for such a unit in a separate account until the unit adopts a plan. Interest on the separate account becomes a part of the account. If a unit fails to adopt a plan for a period of three (3) years, then the balance in the separate account shall be distributed to the other units in the county based on property taxes first due and payable to the units during the calendar year in which the three (3) year period expires.

A capital improvement plan must include the following components:

- 1) Identification and general description of each project that would be funded by the County Economic Development Income Tax.
- 2) The estimated total cost of the project.
- 3) Identification of all sources of funds expected to be used for each project.
- 4) The planning, development, and construction schedule of each project.

A capital improvement plan must encompass a period of no less than two (2) years and must incorporate projects the cost of which is at least seventy-five percent (75%) of the fractional amount certified distribution expected to be received by the county, city, or town in that period of time.

In making a designation, the executive must specify the purpose and duration of the designation. If the designation is made to provide for the payment of lease rentals or bond payments, the executive may specify that the designation and its duration are irrevocable. (IC 6-3.5-7-15)

CEDIT funds must be appropriated by the county council prior to expenditure, and may only be used for those items included in the capital improvement plan.

SHERIFF SERVICE OF PROCESS FEE

Effective July 1, 2006, House Enrolled Act 1158 established a new fee of \$13 from "...a party requesting service of a writ, an order, a process, a notice, a tax warrant, or any other paper completed by the sheriff."

Included with this Bulletin is a memorandum issued by the State Examiner on June 6, 2006, that outlines our suggested accounting procedures in implementing this new fee.

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RECORDER – REDACTING OF SOCIAL SECURITY NUMBERS

House Enrolled Act (HEA) 1114 eliminated the requirement that an individual preparing a document for recording make an affirmation, that they have taken reasonable care to redact each social security number in a document, on a form prescribed by the state board of accounts. The Declaration, County Form 170, was designed for the purpose of making the affirmation and was no longer required to be filed as March 24, 2006.

HEA 1114 now requires an affirmation statement in the following form be included on the instrument:

"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law (name)"

The law does not stipulate where the affirmation statement is to be located, however, we have recommended that the affirmation statement be located near (either before or after) the Preparer's statement. We would not take exception if the preparer included the statement on a separate page and paid the recording fees for the additional page, or combined the above affirmation with the Preparer's statement.

Many questions regarding which instrument types would be required to contain the affirmation statement have arisen. The law states that the affirmation statement is applicable to any instrument **except:**

- (1) an instrument executed before July 1, 1959, or recorded before July 26, 1967;
- (2) a judgment, order or writ of a court;
- (3) a will or death certificate;
- (4) an instrument executed or acknowledged outside Indiana; or
- (5) a federal lien on real property or a federal tax lien on personal property, as described in IC 36-2-11-25

Please note that instruments executed or acknowledged (notarized) outside of Indiana are not required to contain the affirmation statement.

Maps, plats, and surveys would typically be required to contain the affirmation statement. We have determined that UCC filings would not need to contain the statement because it is not possible to determine whether the document was executed or acknowledged in Indiana. We have also been asked whether the affirmation statement would be applicable to military discharged paperwork (DD214). The DD214 is required to contain the person's social security number, therefore, would not be required to be redacted. The Recorder may receive for record or filing an instrument only if all social security numbers in the document are redacted, **unless the social security number is required by law** (IC 36-2-11-15(b)). Again, all documents unless specifically exempted (above) are required to contain the affirmation statement.

COURT FEES

Effective July 1, 2006 court costs have changed as follows:

Judicial Salaries Fee – This fee increases from \$15 to \$16 as provided by Public Law 176-2005; and will continue to increase by \$1 each year until the fee reaches \$20. For each small claims action this fee increased from \$10 to \$11 and will continue to increase each year until the fee reaches \$15 as provided by Public Law 176-2005.

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COURT FEES (Continued)

DNA Sample Processing Fee - This fee increases from \$1 to \$2 as amended by Public Law 174-2006.

Court Administration Fee - This fee increases from \$2 to \$3 as amended by Public Law 80-2006.

Garnishee Service Fee – There is a \$10 fee due from a party for each garnishee defendant, whether named or added, in excess of three. Public Law 174-2006 amended this service fee.

Pretrial Services Fee – Public Law 173 – 2006 allows the courts, under certain conditions, to order the defendant to pay a pretrial services fee if placed under the supervision of a probation officer or pretrial services agency. The initial fee will be at least \$25, but less than \$100. A monthly fee between \$15 and \$30, and administrative fee of \$100 may also be charged.

QUESTIONS AND ANSWERS FROM COUNTY RECORDERS ANNUAL CONFERENCE

Question #1: You said yesterday a plat didn't need an affirmation. Does this also apply to a survey?

Answer #1: Under IC 36-2-7-10.1 a recorded document includes a plat, a map, and a survey. Indiana Code 36-2-11-15, Section A, denotes those documents that do not require the preparer's name or affirmation statement. A plat and survey are not excluded from the requirements under this section.

Therefore, **both** a plat and survey will need to have the required affirmation statement.

Question #2: Why, won't the IRS, as a routine matter, record Federal Tax Lien Releases? We understand self releasing liens. Taxpayers, credit agencies, banks, and title companies do not accept them. We have taxpayers in tears blaming our office. Thanks.

Answer #2: Representatives from the IRS have indicated that self-releasing liens are a matter of law. The IRS recommends that recording offices provide the requestor with a copy of the lien and identify the self-releasing language. This information is contained directly under the name and address on the lien document.

Question #3: Please give in writing to us the language of the affirmation statement and the IC code where it is found. Thank You.

Answer #3: Effective July 1, 2006, an instrument, unless specifically exempted by statute, must include the following language in addition to the preparer's name: **"I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law (name)."** IC 36-2-11-15 (d)

Question #4: Is all this information about the County Identification Security concerning the statement and what documents has to have it going to be sent to recorders.

Answer #4: Yes; please see the article in this issue of the *County Bulletin*.

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QUESTIONS AND ANSWERS FROM COUNTY RECORDERS ANNUAL CONFERENCE (Continued)

- Question #5:** Will you please state exactly what the statement shall say for redaction so that all 92 counties are the same!
- Answer #5:** See answer to Question 3 above.
- Question #6:** Can a company file a document to un-record/set aside a mortgage release? What happened is the company files a release on a mortgage by mistake.
- Answer #6:** We know of no statutory authority for unrecording or setting aside a mortgage release. We would recommend that a separate written instrument be filed indicating the release was filed in error and the lien is being reinstated. Proper reference to this document, along with the incorrect release, should be made on the original mortgage.
- Question #7:** Non Conforming Change – I've never had an explanation, where does that fee go? As a recording fee or to copies or?
- Answer #7:** The nonconforming fee charged per IC 36-2-11-16.5 should be deposited into the County General Fund.
- Question #8:** Who can invest the recorders perpetuation fund, treasurers or recorders? Please explain in more detail.
- Answer #8:** The County Treasurer is the investing officer for the County. Investment of the Recorder's Perpetuation Fund should be done by the County Treasurer in accordance with the County's investment policy as adopted by the Board of Finance.
- Question #9:** What is the proper procedure to take out salary in the recorders perpetuation fund?
- Answer #9:** The recommended procedure is to complete the payroll voucher for remittance to the County Auditor. The County Auditor will process payroll to disburse from the Recorder's Record Perpetuation Fund the payroll amounts. If this does not work well with the County's computerized accounting systems, the County Auditor would process the payroll to be paid from County General Fund which would then be reimbursed on a regular basis from the Recorder's Record Perpetuation Fund.
- Question #10:** Do we have to keep by (statute) a copy of IRS documentation?
- Answer #10:** We are not aware of a requirement to record IRS documentation (Federal Tax Liens) through a different process than what is used for recording other documents.
- Question #11:** Are we required to have a hard copy of the daily audit report, when our system will do a print out on demand for the SBOA auditor? This takes a lot of paper and binders.
- Answer #11:** No, the electronic record is sufficient if approved in lieu of the prescribed form and access can be provided for audit.
- Question #12:** We've been told all other Recorders accept the Indiana State Seal as the Notary Seal. We return the document. It isn't a Notary Seal, nor the word seal isn't imprinted, it is an information seal, please clarify.

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QUESTIONS AND ANSWERS FROM COUNTY RECORDERS ANNUAL CONFERENCE (Continued)

Answer #12: IC 33-42-2-4 states that a notary may not act until the notary has procured a seal that will stamp upon paper a distinct impression, in words or letters, sufficiently indicating the notary's official character. All notarial acts not attested by a seal as described are void.

Question #13: Do we have any \$2 copies?

Answer #13: Copies of pages larger than 8 ½" x 14" are \$2 per page under IC 36-2-7-10.

Question #14: DD214 Military Discharge – I've been told DD214's are not assessable to everyone. They are only available to the veteran or a family member with photo ID is this true? We've also been told when the DD214 is recorded; we provide one certified copy at the time, with no charge, is this true? No recording fee, no certification fee, no copy fee? All future copies will cost the vet or proven family member the usual fees: \$1 plus \$5 for certification, is this true or not? What is the IN code?

Answer #14: We find no statutory support for a policy to limit access to the DD214 to only the veteran or family members once recorded. IC 10-17-2-3 states that no fees are to be charged for recording discharges from military service of the United States of members of any branch of service who are residents of Indiana. IC 10-17-3-2 also allows for one certified copy of any document of record if it is shown that the certified copy is necessary to secure benefits to members at no charge. Future copies of records and certifications would be charged per the fee schedule under IC 36-2-7-10 as stated above.

QUESTIONS AND ANSWERS FROM COUNTY AUDITORS ANNUAL CONFERENCE

Question #1: What can the Rainy Day fund be used for?

Answer #1: Rainy day funds are intended to be used during times of economic downturn in order to stabilize a political subdivision's budget. Rainy day funds may be established by the adoption of an ordinance. The ordinance must specify the purposes of the rainy day fund. Rainy day funds are subject to appropriation prior to expenditure and may be used for any purpose specified in the ordinance.

Question #2: On the County Form 144, Statement of Salaries and Wages, can you change the heading that says "Rate of Monthly Salary"? Most of us pay bi-weekly.

Answer #2: If your rate of pay is not monthly, please change the heading.

Question #3: We would like to increase the fee that the Auditor is authorized to collect for the endorsement of real property transfers. The statute states this is for each deed or legal description of each parcel contained in the deed, for which the Auditor makes a real property endorsement. Do we have to charge per parcel, or can it be per deed? We can charge up to \$5.00 right?

Answer #3: This would depend on the ordinance. IC 36-2-9-18(d) states in part, "...fee is an amount that does not exceed \$5." For each (1) deed or (2) equal description of each parcel?

Question #4: What does the SBOA think of ADP doing payroll and benefits for counties?

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QUESTIONS AND ANSWERS FROM COUNTY AUDITORS ANNUAL CONFERENCE (Continued)

- Answer #4:** The SBOA has no problem with the county contracting payroll services, however, we cannot endorse a specific company.
- Question #5:** One of our department heads takes the department vehicle and had it washed at the car wash. Is this an allowable expense?
- Answer #5:** Yes, we think this can be considered a reasonable cost of maintenance.
- Question #6:** Our local bank called with a question, if a township trustee has funds in the bank, can they invest the funds in CD's?
- Answer #6:** Yes, Townships are under the same investment statute as the county is. All units of government should be investing.
- Question #7:** What is a Farm Raised Cervidae? (Co. Option Dog Fund)
- Answer #7:** Cervidae include deer and their allies, including the familiar moose, elk and caribou.
- Question #8:** Do we pay by receipts or per diem? What are the statutory requirements?
- Answer #8:** It depends on the local ordinance or resolution. If the legislative body of the local wait or board or commission having the authority to approve claims established a per diem rate to cover travel other than hotel and mileage costs, the officer or employee may be reimbursed on the basis of such per diem rate in lieu of submitting receipts.
- Question #9:** What determines when money has to be appropriated? We use CEDIT money for our Tech Park and question of that money needs to be appropriated. Same with CAGIT money, does it need to be appropriated?
- Answer #9:** The statute must specifically exempt funds from appropriations. CEDIT and CAGIT are not exempted. IC 36-2-5-2 requires appropriation.
- Question #10:** SEA 355-2006 – Allows waiver of penalties (must file written petition). What kind of form? Written petition taxpayer? Please explain in detail.
- Answer #10:** The law states that the DLGF shall prescribe the form of the petition; and the type of written proof.
- Question #11:** Indirect Costs from General Fund to Highway Funds (Major Moves) – County Option Dog Tax. If appropriated within individual funds, can the general fund charge and be reimbursed for supporting these fund activities?
- Answer #11:** There is no statutory authority for charging other funds for the administration of these fund activities. The general fund is for county administration.
- Question #12:** When Commissioners have hired a secretary and she records minutes and handles contracts, bids, etc, what is the liability of the Auditor when SBOA finds errors and includes those as Audit Comments to the Commissioners? Our County Attorney has responded as though the duties and responsibilities are still the Auditor's responsibility? Those duties are clearly in that secretary's job description.

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QUESTIONS AND ANSWERS FROM COUNTY AUDITORS ANNUAL CONFERENCE (Continued)

- Answer #12:** Under IC 36-2-2-11 "The County Auditor shall attend...and record...proceedings..." If the Commissioners have employed a person to perform the duties of the Auditor as secretary, under IC 36-2-2-13, the Auditor has no responsibility. The appointment should be approved at a Commissioner's meeting.
- Question #13:** Does everyone who drives a county owned vehicle need to turn in any personal miles each month and receive a 1099 at the end of the year?
- Answer #13:** Please review the IRS Guidelines on fringe benefits.
- Question #14:** Take home vehicles – Some/most are driven after hours at their discretion. This is just a little perk on the side. What do Auditors do if Commissioners and Councilmen just wink at this? Isn't this income? Any statute will require the Auditor to note this as income?
- Answer #14:** Please review the IRS Guidelines on fringe benefits.
- Question #15:** I am one of the counties who requested TIF to be on the agenda. I wanted to know how to do it. I didn't need this kind of information, as our attorney told us all of this. I need to know how to do the abstract and whether to use net or gross AV's. If we use gross, what about all the non-taxables in the area (and there are a lot). If their AV increases, so does their deduction! I need to know how to do this, PLEASE!!! Thank You!!
- Answer #15:** The State Board of Accounts, Department of Local Government Finance and Auditor of State's Office will try to present some of this more detailed information at the Fall Conference
- Question #16:** Public Purchases – Is the documentation to be maintained i.e. bids, register of proposals, etc required to be kept in the Auditor's office or can it be kept in the different depts. responsible for the proposal i.e. Highway Engineer?
- Answer #16:** Ultimately, the Board of County Commissioners is responsible for making sure the records are maintained and accessible. However, that does not preclude the Commissioners from adopting policies to maintain the records in the responsible departments.
- Question #17:** Do we have to keep a bid book? How long do we have to keep the original bids?
- Answer #17:** Purchases made under IC 5-22 (public purchases) require some kind of record of the bid process as adopted by the County. There are suggested forms for this bid record in the back of the Accounting and Uniform Compliance Guidelines Manual for County Auditors. The prescribed Bid Record is required for public works. Original bids must be kept in accordance with the record retention schedule or until approval to destroy is received.
- Question #18:** If our county does not have a credit card ordinance, should our sheriff use credit cards for jail purchases?
- Answer #18:** A credit card policy should be adopted prior to the County getting credit cards in its name. Chapter 14 of the Accounting and Compliance Guidelines Manual for County Auditors gives guidance on what needs to be addressed in the policy.

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QUESTIONS AND ANSWERS FROM COUNTY AUDITORS ANNUAL CONFERENCE (Continued)

Question #19: Why would you redeem a property when the sale was voided? Why wouldn't the owner just pay delinquent amounts?

Answer #19: Because, when the sale is forfeited the certificate of sale goes to the Board of County Commissioners. The purchase price is used to pay judgment or delinquencies of the purchaser. The certificate of sale is still outstanding and the County may take title to the property if not redeemed by the owner.

Question #20: Tax Sale – A real estate agent wants to know if he buys a property in the tax sale can he get reimbursed for his time and mileage if he does the title search himself.

Answer #20: We would not take exception to this in an audit. However, IC 6-1.1-25-2 allows the costs of a title search or of examining and updating the abstract of the title that were incurred and paid by the purchaser before redemption, if certified prior to the redemption Consult with the County Attorney.

Question #21: Tax Sale – Is the County Executive "required" to offer properties that are vacant or abandoned at tax sale?

Answer #21: Yes, if after January 1, 2007, and delinquent taxes or special assessments are owed on the property from the prior years fall installment.

Question #22: If a defendant requests a change of venue does the originating county or the defendant pay the change of venue claim?

Answer #22: The originating county should be billed and pay the costs on a change of venue claim.

Question #23: How is the new sheriff fee of \$13.00 for the pension fund to be handled?

Answer #23: We will be providing information on this after we meet with leaders in the Sheriff's Association and others to solidify the process to be used to comply with this statute. See the recommended process in the memorandum included in this County Bulletin.

Question #24: Advance draws for Charter Schools.

Answer #24: Charter schools do receive property tax distributions. Therefore, they also may request and receive advance draws.

Question #25: Can we make direct deposit of payroll mandatory? And do the Commissioners have to pass on it?

Answer #25: Some counties have adopted such policies. However, it becomes a legal matter to determine if you can enforce such a policy or not.

Question #26: City and Town Court Cost – If only one City or Town qualifies for money, do they get all the money in that fund?

Answer #26: Yes.

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QUESTIONS AND ANSWERS FROM COUNTY AUDITORS ANNUAL CONFERENCE (Continued)

Question #27: If no City or Town qualifies for a share of the city and town court costs, what happens to the money in that fund?

Answer #27: It stays in the fund until a unit qualifies.

Question #28: What can the City and Town use their share of the city and town court costs for? Do they need an ordinance for what they use it for?

Answer #28: City and town court costs should be deposited by the City or Town into their General Fund to be used as appropriated.

Question #29: At our Tax Sale, the Treasurer made the deadline, to bring the money on the property bid to them, was 12 noon the next day. A bidder was ½ hour late in bringing the money in. The Treasurer charged a penalty to the bidder, the bidder understood he owed the penalty but the Treasurer would not let the bidder have the property even after he paid the penalty and was willing to pay what he bid. Is this right?

Answer #29: IC 6-1.1-24-7 requires immediate payment of the bid amount. Then if the bidder fails to pay the Treasurer, they shall pay 25% of the bid as penalty and the property is resold. Penalty goes to the state common school fund.

Question #30: Tax Sale 137B Expenses – Can notification and legal expenses be separate items? What is the earliest date we can accept each expense?

Answer #30: Per IC 6-1.1-25-2, they probably are separate items. The statute lists them as follows:

- (1) The attorney's fees and costs of giving notice under section 4.5 of this chapter.
- (2) The costs of a title search or of examining and updating the abstract of title for the tract or item of real property. The statute is silent as to the earliest date to file form 137B. It does state these costs must have been incurred and paid by the purchaser or agent.

Question #31: Each month our county seems to get new grants. The department heads all request new funds for these even though they are often limited or "one shot" distributions. I.E. (Interpretation grant; pandemic flu grant, EMA performance grants, etc) How should we determine if we should create a new fund or create new line items in an existing fund?

Answer #31: Grants should always be placed in a separate fund. When the grant is over these funds should be closed out.

Question #32: How do you handle the delinquent sewers with the SRI tax sale when they ask us to tell the districts not to certify any sewers to us from 7-1-06 through 10-10-06, when our tax sale is to take place Oct 10, 2006. The purpose of this being not missing the delinquent sewer included in the tax sale. When I suggested this to one of the districts she stated this would not be legal and also unfair to them not having this attached to the property included in the dollar amount due, for title people, etc. I agree with her, and approximately 92 sewers from one district alone are certified to us one to two times a year.

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- Answer #32:** This is a problem with the laws on sewer liens. The cities and towns must certify to you within 10 days of recording a sewer lien. They must record to secure their lien. So you must accept these certifications. You may have to keep a separate record until you can put these on your tax duplicate and bill them the next spring.
- Question #33:** Better let us raise levy with all the postage we need to notify everyone of this year tax last year tax budget. Tax Sale extensive search.
- Answer #33:** Keep in mind that these actual costs may be charged for those properties that go to tax sale.
- Question #34:** Certified Mail – Is the ruling just for pre-tax sale, or for those who move forward to take a tax deed?
- Answer #34:** Could be either. The law suit just addressed the insufficient notice of Arkansas to take the property. Court found due process was not done. They really were not asked to look further at the processes of the purchaser because that notice was successful.
- Question #35:** If the Sheriff knows a car dealer has government discount on certain vehicles and the vehicle is under \$25,000, does there have to be a bid process? The government discount is always lower than out local car dealers.
- Answer #35:** The County could use the special purchase method for government discounts. Even if the special purchase method is not used, bids would not be required for purchases less than \$75,000. If the purchase is less than \$25,000 and the special purchase method is not used, you should follow the County small purchasing policy.
- Question #36:** Tax sale parcels with sewer liens – Does the offering price have to include the sewer lien since it can be an item listed in the tax sale judgment?
- Answer #36:** Yes.
- Question #37:** Tax Sale Notification – Can any that have been sent certified and came back be delivered by the sheriff much like warrants are served? If so can we charge for that service to pay the warrant officer for service? Can we include the fee on tax sale?
- Answer #37:** Service by the sheriff of tax sale notice might be considered reasonable to achieve due process. You could charge these costs in the minimum bid which requires the \$25 for postage and publication (New Law-\$25 or Actual costs) + any other actual costs incurred by the County that are directly attributable to the tax sale.
- Question #38:** What is the "foreclosure procedure" when a bank (etc.) takes deed of property? Is there a "shall" "will" "may" "can" procedure to get the property out of the owners name when they are no longer involved with property?
- Answer #38:** Immediately after a foreclosure sale a sheriff's deed is issued, which should be endorsed in your office then recorded to get the property into the new owner's name.

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Question #39: Deed Transfers – Our County does not transfer any deed that has sewer or weed liens against them. We have been questioned by an attorney, outside our area, that we can not do that. I told him that was a county policy and did not violate any IC. We still do not transfer any deeds with liens. Aren't we correct to set our own policy?

Answer #39: We want to encourage you to adopt office policy to cover areas not addressed by statute, and to establish proper internal controls. However, IC 6-1.1-5-5 requires you to transfer changes of ownership of real property, divisions and partitions made by conveyance, sale devise or descent with 2 exceptions.

1. Exception is made for splits and combinations when taxes have not been paid.
2. There is an exception in Marion County.

All other transfers presented with proper documentation shall be entered in the transfer book and endorsed upon payment of required fees.

Question #40: Can a refund that is due to a taxpayer because of an appeal of real estate AV be setoff by delinquent personal property taxes? Example: ABC Company filed an appeal challenging the amount of the assessed value of their business real estate. The county PTABOA finds that an adjustment is in order, which allows for a \$60,000 refund to ABC Company for the 2004 payable 2005 tax year. When the refund paperwork is presented to the county Auditor and Treasurer, they find that ABC Company owes \$10,000 in delinquent personal property taxes for each of the tax years 2003 payable 2004, 2004 payable 2005, and the first installment of 2005 payable 2006. Can the county apply any or all of the \$30,000 in delinquent taxes to partially setoff the \$60,000 refund?

Answer #40: Under IC 6-1.1-22-14, the County Auditor certifies persons who have money due them from the County. The County Treasurer certifies the person owes delinquent taxes. County Auditor makes deductions from those payments as you would public employees.



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MEMORANDUM

TO: All County Sheriff's, Clerk's of the Circuit Court, County Auditors and County Councils

FROM: Mr. Bruce A. Hartman, C.P.A.
State Examiner

RE: Suggested accounting procedures for the Sheriff's Service of Process Fee

DATE: June 6, 2006

HEA 1158, effective July 1, 2006, establishes a new fee in the amount of \$13 to be collected from a party requesting service of any paper by the County Sheriff. The amended law, IC 33-37-5-15, provides for the Sheriff to collect this fee which presents problems in implementation. The new fees will ultimately be remitted to the County Auditor for deposit into the sheriff's pension trust fund. If the County has not established a sheriff's pension trust fund, the fees are deposited into the county general fund.

One of the problems that we foresee is that once a case is filed the person requesting service would have to then go to the Sheriff's department to pay the fee. Because this process is not very client friendly we predict there will be persons that will not follow through with the entire process and actually go to the Sheriff's department. Additionally, Sheriff's accounting systems will not have current case information to be able to know what cases have been filed for which fees need to be collected and which papers are being served on previous cases where fees have already been paid.

Our audit position is that this new fee should be collected per case that is filed after July 1, 2006 where service by the Sheriff is requested. Because the incoming cases are filed with the Clerk of the Circuit Court, we suggest that the Clerk collect this new fee upon case filing. It is our hope that the Clerk and Sheriff can come to agreement on this method of collection. We believe it provides better customer service and accountability for the funds. If the Clerk does not collect this new fee, we believe it is unlikely that those filing cases with the Clerk will take the additional steps to get the fee to the Sheriff for service. This could result in the necessary court papers not being served or additional certified mail for the Clerk. Also, better accountability is achieved by the Clerk collecting these fees because reconciliation of cases and fees is a functional part of Clerks accounting systems. If the Sheriff collects this fee that office has no way of knowing how many cases fees should have been collected for. Therefore, some accountability is lost.

Under this method, the Clerk would deposit the fees as other court fees. At the end of each month these fees would be submitted to the County Auditor for deposit into the sheriff's pension trust (or county general fund if a sheriff's pension trust fund has not been established). We recommend that the fees be deposited into a clearing fund specifically for these funds to be immediately distributed to the sheriff's pension fund as provided by statute. Appropriation is not necessary because these fees are not being disbursed. The clearing fund merely accommodates the processing of a check to deposit the funds into the sheriff's pension trust fund which is a part of the County's funds.

There may be occasions where the Court waives court costs and fees for reasons like indigence. If the Court orders costs waived the Clerk under our recommendations would not collect the sheriff's service of process fee as instructed by the court order. It will be the determination of the Sheriff of whether to provide service in this case. The Indiana Code provides for service by certified mail for cases unless other service is requested. Therefore, each County Sheriff will want to establish policy for the Sheriff's department in their County. If the Clerk is collecting the service of process fees as we recommend, the policy should be shared with the Clerk of the Circuit Court.

Even though we stated above, cases filed after July 1, 2006 would require the new Sheriff's service of process fee of \$13, this would not preclude a sheriff from collecting this fee for requests for service by the Sheriff on cases that were filed prior to July 1, 2006. These requests would have to be made directly to the Sheriff's department and the fee would be collected upon request at the Sheriff's department. Fees collected by the Sheriff in accordance with this paragraph should be processed in the same manner as fees for out of state service of process which are presented in the next paragraph.

The state and political subdivisions would not pay the \$13 sheriffs service of process fee when filing a case. However, this fee like other court costs and fees could be collected from defendants when the state or a political subdivision is successful in its actions. Additionally, this fee would not apply to filings for protective orders when courts costs and other fees are waived.

HEA 1158 also provides for an increase in the fee for sheriff's service of process on civil cases filed outside of Indiana from \$40 to \$60, effective July 1, 2006. These fees are currently collected by the Sheriff and should continue to be collected by the Sheriff on and after July 1st. Because the cases are filed outside of Indiana, Clerks should not have to process any of these requests or fees. These out of state service of process fees should also be remitted to the County Auditor at the end of each month. We recommend the County Auditor deposit these fees into the same sheriff's service of process clearing account established for the sheriff's service of process fees collected on in state cases. This will make it possible for County Auditors to immediately write the check for deposit into the county sheriff's pension trust fund. Once again appropriation is not necessary for this check that will be used to merely transfer the funds to the pension trust fund as required by law.

IC 33-37-7-11 also applies in all counties that have established a sheriff's pension trust fund. It provides for the Sheriff to submit to the County Council a verified claim for each paper served by the Sheriff's department. From the County's share of court costs collected by the Clerk of the Circuit Court and deposited into the county general fund, the County Council shall appropriate monies for each verified claim. Effective July 1, 2006, the amount per verified claim increases from \$12 to \$13 under HEA 1158. As in the past upon appropriation, the County Auditor is to deposit the amount into the sheriff's pension trust fund. This would not need to be processed through the clearing account. The check would be written directly from county general fund to the pension trust. This section of law is not new. However, we wanted to make you aware that this section was not replaced by the new fee we referred to above. This section of law is still in effect and will increase in amount on July 1, 2006.

TRW/db